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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,389	12/10/2001	Jean-Noel Thorel	108961.01	8418
7590	02/07/2005		EXAMINER	
OLIFF & BERRIDGE, PLC P.O. Box 19928 Alexandria, VA 22320			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/006,389	THOREL, JEAN-NOEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan D. Coe	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 October 2004 and 18 November 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5-14,16,18-23 and 29-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-14,16,18-23 and 29-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendments filed October 7 and November 18, 2004 have been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3, 5-14, 16, 18-23, and 29-35 are currently pending. The previous restriction requirement is withdrawn.

#### ***Claim Objections***

3. Claims 13 and 33 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 13 specifies that the composition contain water. Water is already a required ingredient of claim 1; thus, claim 13 does not further limit claim 1. The same reasoning also applies to claims 33 and 30.

#### ***Claim Rejections - 35 USC § 112***

Claims 1-3, 5-14, 16, 18-23, and 29-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 1 and 30 are indefinite because it is not clear what amounts are encompassed by “minor” part by weight of water.

5. Claim 14 is confusing because it contains two negative limitations that appear to conflict with the limitations set forth in claim 1. Claim 14 specifies that the composition is not a complex of natural product; however, claim 1 requires that the compounds come from the skin, i.e. biodermal. In addition, claim 14 states that there is no excipient or vehicle. Claim 1 already contains this limitation. Clarification is requested.

***Claim Rejections - 35 USC § 102***

6. Claims 1-3, 5-8, 12-14, 16, 18-23, and 29-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Marieb (Human Anatomy and Physiology, 3<sup>rd</sup> ed. (1995); Benjamin Cumming Pub., pp. 144-145) in light of [www.dermnetnz.org/acne/sebum.html](http://www.dermnetnz.org/acne/sebum.html).

Marieb describes substances found of the surface of the skin which include sweat and sebum. Sweat contains water, antibodies, trace wastes, lactic acid, and vitamin C. Sebum is also on the surface of the skin. Sebum naturally contains glycerides, fatty acids, waxes, and cholesterol (see [www.dermnetnz.org/acne/sebum.html](http://www.dermnetnz.org/acne/sebum.html)). These ingredients would naturally contain amino acids and trace elements. Thus, the surface moisture on the skin is made up of a mixture that meets the limitations of applicant's claims.

***Claim Rejections - 35 USC § 103***

7. Claims 1-3, 5-14, 16, 18-23, and 29-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,250,513.

US '513 teaches an antioxidant composition that contains tocopherols, lysine, and skin derived polypeptides (see Examples 1 and 2). The composition can be added to numerous

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substances including water and minerals that need protection from oxidation. Thus, even if the reference does not specifically disclose such an embodiment it is considered encompassed by the disclosure of the reference and is an obvious modification of the embodiments taught by the reference.

8. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*  
2-3-05

Susan D. Coe  
Primary Examiner  
Art Unit 1654